

**REMARKS**

In the Office Action of December 28, 2007, the Examiner withdrew claims 25 and 26 as independent inventions. However, these claims read on the same embodiments as claim 1. As such, the claimed subject matters of claim 1 and 25 do overlap in scope and do not have a materially different design. While the Examiner states that the claims have a different field of search, there is no evidence of this to be true. The additional recitation of a cover does not make the invention independent. As stated in MPEP Section 8060.03, claims of an application defining the same essential characteristics of a single disclosed embodiment should not be restricted. This is because claims are but differing definitions of the same disclosed subject matter, varying in breadth or scope of definition. In this instance, both claims 1 and 25 define the same essential characteristics of a first channel, a plurality of second channels and the second channels having a greater capillary force than the first channel at the branch points.

The Examiner rejects claims 1-23 as being indefinite. This rejection was not previously made and was not necessitated by amendment. Therefore, the finality of the rejection is improper and should be withdrawn as applicant has not been afforded an opportunity to fairly respond to the new rejection.

The Examiner states that the structure of the microfluidic channel arrangement that in part affects capillarity to induce liquid movement is unclear. The capillarity of a channel is an inherent feature of a channel. The factors that affect capillarity are well known to one of ordinary skill in the art. It is important that the channels have the claimed capillarity in order for the invention to function and one of ordinary skill may achieve the claimed capillarity in any suitable manner.

The Examiner rejects claims 1-11, 20 and 23 as being both anticipated and obvious over US 2002/0195463 (Seki). It is unclear why the claims are rejected as being anticipated by Seki when the Examiner states, in a separate rejection, that Seki does not disclose all of the claimed subject matter. In the obviousness rejection, the Examiner states that Seki does not disclose a channel configuration having first and second channels with specific capillarity or capillary force inducing properties. This statement negates the Examiner's rejection based on anticipation.

In the rejection of claims 1-11, 20 and 23, the Examiner states that Seki does not disclose a channel configuration having first and second channels with specific capillarity or capillary force inducing properties but relies upon the premise that a claim can be proved obvious merely by showing that the combination of known elements was obvious to try. The combination of familiar elements is likely to be obvious when it does no more than yield predictable results. While this may be true, it does not relieve the Examiner of showing that the elements are known or familiar, as stated above, but rather gives motivation to combine elements that are shown to be known or familiar. In this case, the Examiner has not shown that the elements not disclosed by Seki are known, as there is no secondary reference. The secondary references used to reject the remaining claims do not cure the defect of the rejection of claims 1-11, 20 and 23.

Despite the above arguments that the Examiner's rejection are flawed and should be withdrawn, Applicant has amended the claims to further define the invention. Seki does not disclose a recess in the second channel and such is not necessary for the functioning of Seki's device. Seki's device produces small droplets whereas the invention meters amounts of fluids larger than droplets. It is believed that the finality of the rejection should be withdrawn and the amendment entered due to the new rejection not

necessitated by the previous amendment. In any event, Applicant requests a response to each issue raised in Applicant's response.

The claims are allowable and favorable action is eagerly and earnestly solicited. A one month extension of time accompanies this response. If any additional fees are due and owing, the Commissioner is authorized to charge Deposit Account No. 08-2455.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher J. McDonald", is written over a horizontal line.

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